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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.C.C. No. 272/2006

APPLICANT M/s. Shree Enterprises, Korba (C.G.) Through – B.N.Agrawal (Partner) Aged about 50 years, Son of Late Shri M.R.Agrawal, R/o. Agrasen Marg, Korba (C.G.)

Versus

RESPONDENT M/s. Star Ferro Alloys Pvt. Ltd., New Delhi, Trhough The Managing Director, F-6B, Hauz Khas Enclave, New Delhi 110 016

Present: Shri Anand Tiwari, Advocate for the applicant.
Shri Ashish Shrivastava, Advocate for the non-applicant.

O R D E R
13.04.2007

Per Dhirendra Mishra, J.

The applicant has preferred this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short hereinafter referred to as "the Act") for appointment of arbitrator.

2. The case of the applicant is that the applicant and the non applicant entered into an agreement on 11.04.2003 at Baradwar, Distt. Janjgir-Champa for the work providing labour, machineries, transportation and marketing of Dolomite as per terms and conditions mentioned in Annexure A-1. Clause-11 of the agreement provides "*if any difference or dispute arises in the interpretation of any of clauses of this Agreement in respect of non compliance of the*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conditions by either of the parties, the matter shall be referred to the Sole Arbitrator for arbitration under the provisions of the Arbitration and Conciliation Act, 1996."

3. The agreement was valid for a period of five years from the date of signing of the agreement. However, the work under the agreement could not be completed because of the failure of the non applicant to carry out the obligations on their part as per the agreement and the applicant was constrained to issue notice as per the communication of Annexure-A/2 dated 04.03.2005, calling upon the non applicant to provide facilities by performing their obligations as per terms of the agreement. However the non applicant in their reply of Annexure-A/3 dated 07.03.2005 denied the allegations levelled in the communication of Annexure-A/2 and rescinded the agreement of Annexure-A/1 dated 11.04.2003.

4. The applicant vide their communication dated 11.04.2005 of Annexure-A/4 referring provisions of Clause-11 of the agreement invoked the arbitration clause and requested the non applicant to process for appointment of sole arbitrator by suggesting the names of the three persons for their consent so that the dispute may be referred to a sole arbitrator.

5. Another notice was served to the non-applicant of Annexure - A/5 whereby names of the three arbitrators were proposed and the non applicant was requested to consent on any one of the proposed

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध) -3-

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

names for appointment of sole arbitrator within thirty days of the receipt of this letter.

6. The non-applicant vide reply of Annexure-A/6 dated 29.07.2005, did not accept the names suggested by the applicant and reference was made to earlier discussions whereby both the parties had mutually agreed on the two names of the arbitrator to represent each of them.

7. The non-applicant has objected to the maintainability of this petition on the ground that Clause 11 of the agreement of Annexure - A/1 cannot be regarded as an arbitration agreement and the agreement does not contemplate dispute of all nature to be referred to arbitration as the arbitration clause refers only to interpretation of the clause of the agreement.

8. I have heard learned counsel for the parties.

9. I have perused the agreement as also the various correspondences filed by the applicant. So far as the objection of the non applicant that Clause 11 provides for arbitration with respect to difference or dispute in the interpretation of any clause of the agreement in respect of non compliance of the conditions by either of the parties was concerned, the agreement provides for respective obligations of the parties in various clause of the agreement. The dispute raised by the applicant pertains to non-performing of the obligations by the non applicant as per terms and conditions of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

contract agreement. Therefore I see no merit in the objection of the non-applicant regarding maintainability of the instant petition.

10. So far as the allegations of the applicant and non-applicant regarding non performance of their respective obligations is concerned the same is to be adjudged by the arbitrator.

11. Considering that the parties to the proceedings had entered into a contract which contains arbitration clause and further considering that the non-applicant has failed to act on the request of the applicant for the appointment of arbitrator and also considering that the dispute had arisen out of the contract agreement, this Court is of the opinion that a case for appointment of arbitration is made out.

12. Learned counsel for the parties submit that they have no objection if Hon'ble Shri Justice V. K. Shrivastava, former Judge of High Court of Chhattisgarh, Bilaspur is appointed as sole Arbitrator in the present case.

13. Therefore, I hereby, with the consent of the parties, appoint Hon'ble Shri Justice V.K.Shrivastava, former Judge of High Court of Chhattisgarh at Bilaspur, sole arbitrator, subject to his consent.

14. The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

15. Registry to intimate Hon'ble Shri Justice V.K.Shrivastava, former Judge of High Court of C.G. Bilaspur, about his appointment

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आदेश पत्रक -5- (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	as Arbitrator and to send all the papers along with address of the parties. 16. Parties are also directed to approach Hon'ble Shri Justice V.K.Shirvastava, who is presently residing at Bungalow No.B/46, Civil Lines, Bilaspur and to submit papers and to take part in arbitration proceedings. M.C.C. is accordingly disposed of. **Sd/-** **Dhirendra Mishra** **Judge**	